



**ORDER NUMBER
G-306-23**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

BEFORE:

D. A. Cote, Panel Chair
E. A. Brown, Commissioner
M. Jaccard, Commissioner

on November 10, 2023

ORDER

WHEREAS:

- A. On June 30, 2023, the British Columbia Utilities Commission (BCUC) received a complaint filed by S.U.C.C.E.S.S Affordable Housing Society (SUCCESS) and the City of Vancouver (City) (collectively, the Complainants), regarding the inability to reach an agreement with Cambie Gardens Energy Limited Partnership (CGE) on the rates and terms for the delivery of thermal energy services from the CGE Thermal Energy System (TES) (Complaint);
- B. On August 18, 2023, CGE responded to the Complaint, seeking, among other things, an order from the BCUC removing the City from the proceeding on the basis that the City is not a customer and is a competitor; and that the City has no standing to participate in the Complaint as it is not a customer of the CGE TES;
- C. By letter dated September 13, 2023, SUCCESS and the City replied to CGE's letter dated August 18, 2023, including submissions on the standing of the City in the Complaint;
- D. By Order G-271-23 dated October 12, 2023, the BCUC established a regulatory timetable to hear the Complaint; accepted the City as a party to the Complaint; and directed CGE to provide specific information, along with any associated requests for confidentiality as required;
- E. On October 26, 2023, CGE filed a redacted public response to the BCUC's information request detailed in Order G-271-23, submitting that following a determination on CGE's request for confidentiality, Appendix C of the confidential version may be made available to SUCCESS following the standard undertakings of confidentiality. CGE reiterated its position that the City should have no access to CGE's proprietary and confidential information. CGE submits confidentiality should remain indefinitely given the risks to CGE;

- F. By letters dated November 2, 2023, the BCUC requested additional submissions from CGE on how granting access to a) SUCCESS and b) the City to all or part of the redacted materials could reasonably be expected to result in harm. The BCUC also requested SUCCESS and the City to provide comments on CGE's request for confidentiality;
- G. On November 7, 2023, CGE and the Complainants responded to the BCUC's November 2, 2023 request for submissions; and
- H. The BCUC has considered CGE's confidentiality requests in accordance with the BCUC's Rules of Practice and Procedure as set out in Order G-72-23, and makes the following determinations.

NOW THEREFORE for the reasons set out in Appendix B to this order, the BCUC orders as follows:

- 1. The regulatory timetable is amended, as outlined in Appendix A to this order.
- 2. The information redacted in Exhibit B2-4 and Exhibit B2-5 will be kept confidential from the public due to the presence of commercially sensitive information, until further order of the BCUC.
- 3. CGE is directed to provide the information confidentially filed to the City and SUCCESS following receipt of a signed Confidentiality Declaration and Undertaking from both the City and SUCCESS.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day November 2023.

BY ORDER

Original signed by:

D. A. Cote
Commissioner

Attachment

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

REGULATORY TIMETABLE

Action	Date (2023)
BCUC Information Request (IR) No. 1 to CGE and the Complainants	Tuesday, November 21
CGE IR No. 1 to the Complainants	Tuesday, November 28
Complainants IR No. 1 to CGE	Tuesday, November 28
CGE and Complainants responses to IR No. 1	Tuesday, December 12
Further process	To be determined

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

REASONS FOR DECISION

CONTENTS

1.0	Introduction	1
1.1	BCUC Rules of Practice and Procedure.....	3
2.0	Confidentiality – Public Access	4
2.1	CGE’s Request.....	4
2.2	Submissions of the Parties – November 7.....	4
2.3	Panel Determination	4
3.0	Confidentiality – SUCCESS and the City Access	5
3.1	CGE’s Request.....	5
3.2	Submissions of the Parties	6
3.3	Panel Determination	7

1.0 Introduction

On June 30, 2023, S.U.C.C.E.S.S. Affordable Housing Society (SUCCESS) and the City of Vancouver (City) (jointly the Complainants) filed a complaint with the BCUC pursuant to section 83 of the *Utilities Commission Act* (UCA) relating to the lack of agreement with Cambie Gardens Energy Limited Partnership (CGE) on the rates and terms for the delivery of space heating and hot water to serve SUCCESS at 603 West 59th Avenue, Vancouver, BC (Complaint).¹

The City is the owner of an air space parcel (ASP) in one of two buildings of Parcel A of Phase 1 of the Cambie Gardens development at the Pearson Dogwood site in Vancouver. SUCCESS leases the ASP from the City in a building in which CGE is the sole energy utility providing space heating and hot water (Service).²

Onni Pearson Dogwood Development Limited Partnership (Onni), of which CGE is a subsidiary, constructed the Cambie Gardens development in which the Thermal Energy System (TES) is located.³

The CGE TES is an exempt Stream "A" TES pursuant to BCUC Order G-373-21.⁴ The CGE TES provides thermal energy services to a total of three customers: SUCCESS, a Residential Strata, and a Commercial retail section.

¹ Exhibit B1-1, p. 1.

² Ibid., pp. 2-3.

³ Exhibit B2-2, p. 6.

⁴ <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/517904/index.do?q=g-373-21>.

The Complainants have requested access to CGE's financial materials and have agreed to file the standard BCUC confidentiality undertaking.⁵ The Complainants seek the BCUC's assistance to adjudicate the unresolved issues and to set the rates and terms for the Service.⁶

CGE stated that it is prepared to submit supporting materials to the BCUC in confidence to justify their rates. However, CGE has refused to supply this information to the Complainants stating that it is confidential and that the City is a competitor.⁷

By Order G-271-23 dated October 12, 2023, the BCUC established a regulatory timetable to hear the Complaint and accepted the City as a party to the Complaint. The BCUC also directed CGE to provide specific information.

Additionally, the Panel found that CGE had not made a persuasive case for why confidential information should not be shared with the City but without having reviewed the information CGE intended to file, concluded it is not able to determine whether the information should be excluded from the City. The Panel stated that CGE may file a request for confidentiality pursuant of section 18 of BCUC's Rules of Practice and Procedure when submitting documents.⁸

On October 26, 2023, CGE filed a redacted public response to the BCUC's information request detailed in Order G-271-23, submitting that following a determination on CGE's request for confidentiality, Appendix C of the confidential version may be made available to SUCCESS following the standard undertakings of confidentiality. CGE reiterated its position that the City should have no access to CGE's proprietary and confidential information and submits confidentiality should remain indefinitely given the risks to CGE.⁹

By letter dated November 2, 2023, the BCUC requested supplemental rate information from CGE, along with additional submissions on how granting access to a) SUCCESS and b) the City to all or part of the redacted materials could reasonably be expected to result in harm.¹⁰

On the same date, the BCUC also requested SUCCESS and the City to provide comments on CGE's request to:¹¹

- Provide no access to the City to any of the redacted materials; and
- Provide SUCCESS with access only to Appendix C – SUCCESS Customer Service Agreement, following an undertaking of confidentiality.

On November 7, 2023, CGE and the Complainants filed their submissions to the BCUC.¹²

These reasons for decision summarise parties' submissions and the Panel's determinations with respect to CGE's request for confidentiality, in accordance with the BCUC's Rules of Practice and Procedure as set out in Order G-72-23.

⁵ Exhibit B1-2, p. 4.

⁶ Exhibit B1-1, p. 1.

⁷ Exhibit B2-2, pp. 8-9.

⁸ Exhibit A-7, p. 4.

⁹ Exhibit B2-4, p. 1.

¹⁰ Exhibit A-9.

¹¹ Exhibit A-8.

¹² Exhibits B2-5 and Exhibit B1-3, respectively.

1.1 BCUC Rules of Practice and Procedure

Part IV of the BCUC Rules of Practice and Procedure (Rules) outlines the provisions for requests for confidentiality and the filing of confidential documents.

Rule 20.01 provides considerations for the BCUC with respect to determinations on confidential information:

In determining whether the nature of the information or documents require a confidentiality direction, the BCUC will have regard to matters that it considers relevant, including:

- (a) whether the disclosure of the information could reasonably be expected to result in:
 - i. undue material financial loss or gain to a person;
 - ii. significant harm or prejudice to that person's competitive or negotiating position;
 - or
 - iii. harm to individual or public safety or to the environment;
- (b) whether the information is personal, financial, commercial, scientific, labour relations or technical information that is confidential and consistently treated as confidential by the person;
- (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing;
- (d) whether the person submitting the document has any legal obligation to maintain confidentiality; and
- (e) whether it is practicable to hold the hearing in a manner that is open to the public.

Rule 24.03 states:

If a request for access to confidential information is accepted, the requestor must sign and file with the party and the BCUC a Declaration and Undertaking form in respect of the use of the confidential information before receiving a copy of the confidential information from the party. The Declaration and Undertaking form is a binding commitment by the requestor: (i) to use the confidential information disclosed exclusively for purposes related to the proceeding; (ii) to hold the information in confidence; (iii) to not reproduce the document(s) disclosed; and (iv) to return to the party the confidential document(s) or to destroy the confidential document(s) within fourteen (14) days of the BCUC's final decision in the proceeding. The BCUC may impose any other additional conditions or safeguards as it considers appropriate in the circumstances.

CGE has made two separate requests for confidentiality. The first of these involves restricting public access to the information it has provided while the second is to further restrict access to the Complainants, SUCCESS and the City. In Section 2.0, Confidentiality – Public Access and Section 3.0, Confidentiality - SUCCESS and the City which follow, the Panel reviews the submissions and renders a determination on each.

2.0 Confidentiality – Public Access

2.1 CGE's Request

On October 26, 2023, CGE provided two versions of its responses to the questions posed by the BCUC in Order G-271-23, one in confidence to the BCUC¹³ and a redacted public version.¹⁴ The public version redacts information that CGE submits is commercially sensitive and confidential, the release of which can reasonably be expected to do commercial harm to CGE. CGE requests that the version submitted in confidence to the BCUC not be disclosed to SUCCESS, the City, or the public until such time as the BCUC has considered the merits of CGE's confidentiality request.¹⁵

Pursuant to section 18.01 of the Rules, CGE requests that the BCUC direct the unredacted response be filed in confidence, not be made part of the public record, and that the BCUC take any other measures and make any other direction it deems necessary to keep such materials confidential.¹⁶

CGE further submits information filed in confidence should remain confidential indefinitely given the risks to CGE.¹⁷

2.2 Submissions of the Parties – November 7

CGE reiterates its previous submission that it would be detrimental to CGE's competitive or negotiating position in the TES marketplace if its commercially sensitive financial information regarding its operations were disclosed in this proceeding when other competitors in the TES market have not had their financial information disclosed. CGE submits the harm to CGE and Onni outweighs the public interest benefit in disclosure, and that the BCUC has the resources and expertise to resolve the dispute in confidence without disclosure to the Complainants.¹⁸

The Complainants have stated that the City and SUCCESS have no issue with the confidential filing of commercially sensitive information in relation to the public record, as long as the City and SUCCESS have access to the information.¹⁹ However, noting CGE's submission regarding the BCUC's handling of other TES providers filing of confidential information, the Complainants note the CGE has not explained the circumstances of those filings and whether the customers contested the rates and terms of service.²⁰

2.3 Panel Determination

The Panel grants CGE's request to keep the information currently filed as confidential in this proceeding confidential from the public due to the presence of commercially sensitive information, until further order of the BCUC.

¹³ Exhibit B2-4-1.

¹⁴ Ibid.

¹⁵ Ibid., p. 1.

¹⁶ Ibid., p. 1.

¹⁷ Ibid., p. 3.

¹⁸ Exhibit B2-5, p. 2.

¹⁹ Exhibit B1-2, p. 4; Exhibit, p. 5.

²⁰ Exhibit B1-3, p. 5.

3.0 Confidentiality – SUCCESS and the City Access

3.1 CGE's Request

CGE submits that following the Panel's determination on CGE's request for confidentiality, Appendix C (the proposed SUCCESS Customer Service Agreement offered by CGE), may be made available to SUCCESS on the BCUC's standard undertakings of confidentiality. CGE reiterated its position that the City, who has refused to be CGE's customer, should have no access to CGE's proprietary and confidential information.²¹

CGE submits the BCUC has previously kept information relating to construction costs, purchase price, operating costs, and sustainment capital for other TES providers²² confidential, citing Order G-94-20, which granted FortisBC Alternative Energy Services Inc. (FAES) a Stream A TES exemption for its Lynn Valley 2 Thermal Energy System, and submits such treatment is justified in this proceeding.²³

More specifically, CGE states that "it would be unjust and unreasonable to require CGE to disclose sensitive information to its customer, Success, when the Commission has accepted requests for confidentiality from other competitive TES providers such as [FAES]."²⁴ Such differential treatment of competitors in the TES market would be contrary to the public interest of maintaining a fair competitive market. CGE submits the BCUC can review the evidence filed without requiring disclosure to the public, the City, or SUCCESS, as it has done in other TES proceedings.²⁵

CGE submits that:

.... The unredacted materials contain confidential financial and commercial information known only to CGE and its parent companies, including of the Onni Group. The relationship between the City, CGE and the Onni Group is complicated by the fact that the Onni Group is active in development in the city of Vancouver and will continue to pursue thermal energy system developments. The City operates separate district energy systems, and providing sensitive pricing and cost allocation material to the City in this context -where they have refused to execute any agreement with CGE - is prejudicial to CGE and the Onni Group. Furthermore, the Onni Group has in the past, and likely will in the future, bid on lands being sold by the City that include the requirement to construct thermal energy systems as part of rezoning; the City would have an unfair advantage over the Onni Group in negotiations if they are privy to its utility costs and revenues. Releasing the information to the City would reasonably be expected to result in significant harm or prejudice to CGE and its parent companies in negotiating future development opportunities where the City may be involved, including as a DES provider. CGE submits the harm in these circumstances outweighs the benefit of providing the City with the financial information proposed to be filed in confidence."²⁶

²¹ Exhibit B2-4, p. 1; Exhibit B2-3, p. 2.

²² FortisBC Alternative Energy Services Inc. Stream A Registration of the Lynn Valley 2 Thermal Energy System, Order G-94-20.

²³ Exhibit B2-4, p. 2.

²⁴ Ibid., p. 2.

²⁵ Ibid., pp. 2-3.

²⁶ Ibid., pp. 2-3.

In providing the additional information requested by the BCUC in Exhibit A-9, CGE has filed clean and redacted copies of the responses relying on the request for confidentiality as set out in their earlier submission and supplemented by the submissions below.²⁷

3.2 Submissions of the Parties

SUCCESS and the City

The Complainants submit that the City as owner of the ASP and landlord of the space, has a direct interest in rates and terms for the ASP for any tenant – now and in the future. The City has resources to assist SUCCESS in negotiating the current rates and terms, and the City also has a broader understanding of the overall development and the potential for cross-subsidisation.²⁸

The Complainants submit that CGE is the sole utility provider for the Service to the ASP, and therefore has monopoly power over the tenants of the ASP. The City and SUCCESS both need access to CGE’s underlying cost structure and assumptions to assess what fair and reasonable terms should be for the Service, and this information “is a foundation for the review of public utility rates.”²⁹

The Complainants submit that it is a matter of basic fairness for the City and SUCCESS to have access to all the relevant information in this review to be able to advocate for their interests. “Access to this information is a fundamental starting point for both a fair negotiation of the Service Agreement and a fair review before the Commission.”³⁰

The Complainants note that CGE’s argument is to deny access to the information based on the fact that Onni is an active developer in Vancouver and it may be opposite the City on land sales and rezoning applications. The Complainants submit this has nothing to do with the City being a “competitor,” and note that CGE has not cited a single instance where CGE (or Onni) compete with the City on utility service. Being opposite the City on a land sale and a rezoning application has nothing to do with the fairness of the CGE rates and terms of Service. CGE has not explained its assertion that disclosure of the CGE cost structure the rates would somehow prejudice Onni in future negotiations with the City, and the Complainants consider that the assertion has no merit.³¹ The Complainants assert that “the Commission has already rejected [CGE’s] position and should do so again.”³²

The City and SUCCESS are prepared to file the standard BCUC confidentiality undertaking and keep confidential information in confidence.³³

CGE

CGE submits that it relies on its October 26, 2023 submissions in keeping materials disclosed in its October 26, 2023 filing confidential. Its view is that such disclosure would cause significant harm and prejudice to CGE and Onni’s competitive or negotiating position noting that other TES competitors have not been required to do so. CGE points out that the harm caused by such disclosure would outweigh the public interest benefit and submit

²⁷ Exhibit B2-5, p. 1.

²⁸ Exhibit B1-3, p. 2.

²⁹ Ibid., p. 3.

³⁰ Ibid., p. 5.

³¹ Ibid., p. 4.

³² Ibid., p. 2.

³³ Exhibit B1-2, p. 4; Exhibit B1-3, p. 5.

that in any case neither the City nor SUCCESS have the expertise or knowledge to match the BCUC capabilities in this regard.³⁴

CGE submits that the City having access to Onni or CGE's costing approach to its thermal energy system would put Onni at a competitive disadvantage when responding to a property sales package released by the City which includes a thermal energy requirement.³⁵

3.3 Panel Determination

The Panel denies CGE's request to hold the materials it has filed in this proceeding confidential from the Complainants, SUCCESS and the City. Failing to allow disclosure of pertinent information regarding a proceeding to the participants who will be directly affected by the outcome should only be considered in exceptional cases where the potential for harm to the non disclosing party is evident and the potential for harm has been clearly demonstrated in evidence. CGE has not provided a persuasive argument as to why this confidentiality should be granted and have provided no substantive examples of where they are in competition with the City. Therefore, the Panel agrees with the Complainants that it is "a matter of basic fairness for the City and SUCCESS to have access to all the relevant information in this review to be able to advocate for their interests."

CGE has had a number of opportunities to explain to the BCUC what specific harm could occur as a result of disclosure in the event SUCCESS and the City were provided access to the materials. Most recently, in its letter of November 2, 2023, the BCUC requested CGE to provide a submission on **how** (emphasis added) granting access to the redacted materials could produce an undesirable result and to outline a scenario to demonstrate how the City having this information would create an unfair advantage for the City over the Onni Group in negotiations. CGE responded that the City having access to its costing approach for its thermal energy systems would put Onni at a disadvantage in a land bidding process. Why this would put Onni at a disadvantage is far from clear to the Panel and we remain unpersuaded as to whether an Order in favour of confidentiality with respect to the City is warranted.

Concerning disclosure of the materials to SUCCESS, CGE has provided no reasonable or persuasive argument to why this is justified. SUCCESS, like the City, will be significantly impacted by the outcome of this proceeding. To deny SUCCESS access to materials thereby stifling their ability to participate in this Complaint with no clear evidence to support why this request should be approved would be unfair and unjust.

Therefore, for these reasons the Panel determines that both SUCCESS and the City are to be provided access to the information confidentially filed by CGE once they have filed the BCUC's Confidentiality Declaration and Undertaking. The Panel notes that Rule 24.03 of the BCUC Rules of Practice and Procedure are very prescriptive as to the terms under which access to confidential information is granted. A signed Declaration and Undertaking form is a binding commitment by the requester to abide by these terms.

The Panel notes CGE's comments concerning CGE's reference to the handling of FAES's Lynn Valley 2 TES. For clarity, the BCUC Order G-94-20 granting a Stream A TES exemption was the result of FAES filing an application in accordance with the BCUC's TES Regulatory Framework Guidelines. The BCUC did not hold a public hearing, and no other parties requested access to the confidential information provided by FAES. The Panel does not consider this example comparable to a situation where parties to a proceeding are requesting access to materials being treated as confidential by the BCUC.³⁶

³⁴ Exhibit B2-5-1, p.2.

³⁵ Exhibit B2-5, p. 2.

³⁶ <https://docs.bcuc.com/documents/forms/2022-Confidentiality-Declaration-and-Undertaking-Form.pdf>